



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/169587

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee County Department of Human Services in regard to Child Care, a hearing was held on January 08, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner should have been included in his wife's household at between May 1, 2012 and February 28, 2015 causing a child care overpayment in the amount of \$31,129.15.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Attorney [REDACTED]

Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is currently a resident of Texas. During the alleged overpayment, the petitioner was living in Milwaukee, County.
2. On September 28, 2015 the Department sent the petitioner three child care overpayment notices stating the following:
 - a. From May 1, 2012 to December 31, 2012 he was overpaid \$13,440.85 in child care benefits under claim number [REDACTED]
 - b. From January 1, 2013 to December 31, 2013 he was overpaid \$10,120.00 in child care benefits under claim number [REDACTED]
 - c. From January 1, 2014 to December 31, 2014 he was overpaid \$14,880.18 in child care benefits under claim number [REDACTED]
 - d. From January 1, 2015 to February 28, 2015 he was overpaid \$959 in child care benefits under claim number [REDACTED]
3. After the petitioner received these overpayment notices he provided documentation showing that some of the overpayment was incorrect. The Department rescinded the old notices, and issued new overpayment notices on November 23, 2015 stating the following:
 - a. From May 1, 2012 to December 31, 2012 he was overpaid \$7,672.19 in child care benefits under claim number [REDACTED]
 - b. From January 1, 2013 to December 31, 2013 he was overpaid \$8,576.78 in child care benefits under claim number [REDACTED]
 - c. From January 1, 2014 to December 31, 2014 he was overpaid \$14,880.18 in child care benefits under claim number [REDACTED]
 - d. From January 1, 2015 to February 28, 2015 he was overpaid \$959 in child care benefits under claim number [REDACTED]
4. The new overpayment notices reduced the total overpayment from \$38,441.93 to \$31,129.15.
5. Between May 1, 2012 and February 28, 2015 the petitioner was in the home with his children and their mother at all times except for September, October, November, and December 2012.
6. On October 23, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the

assistance group was eligible to receive, regardless of the reason for the overpayment. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, §15.2.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, §DCF 101.26(1). The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Care Policy Manual, Chapter 2, §2.3.1.

In this case the only issue is whether the petitioner was living in the home with his wife and children during the overpayment period. The petitioner does not contest the calculations of the overpayment. Rather, he argues that there should be no overpayment because he was not living in the home.

The Department presented significant evidence that the petitioner was living in the home with his wife and children during the overpayment periods. At one point the petitioner was looking into starting a business. He registered that business with the State Department of Financial Institution under his name with the address where his wife and children lived. There was a family court case brought by the child support agency in March of 2012. In May of 2012 an affidavit of service was filed for both the petitioner and his wife. The case lists both the petitioner and his wife at the same address. The petitioner and his wife were not married until 2013. They married on April 6, 2013. On April 10, 2013 the petitioner was issued a new driver's license. The address for the driver's license was the same address where his wife lived. There are several facebook posts during this overpayment period showing the petitioner and his wife together. In addition in November of 2014 the petitioner registered to vote at his wife's address. The petitioner started working for [REDACTED] during the overpayment period. The address that he used for his employment was the same as his wife's address.

The petitioner agrees that for part of this overpayment period he was in the same household as his wife. He is unable to give specific dates or periods. He is also unable to say where he was living. His testimony was that he was living here, there, and everywhere. He also testified that every time he and his wife would "get into it" he would go to his grandma's house on [REDACTED]. He could not provide the specific address for his grandmother's house. He attempts to explain away each piece of the Department's evidence. He states that he had to use the wife's address for his work because of his service area. He states that he never had that business and that he filed something in 2014 dissolving the business. He also testified that this was set up by a third party not himself.

The petitioner's testimony is simply not credible. The petitioner is unable to provide specific addresses and specific time periods associated with those specific addresses. His testimony was largely self-serving. He was not always consistent. I further note that the agency already reduced the overpayment for the period in which the petitioner could show he was not living with his wife.

CONCLUSIONS OF LAW

The Department correctly included the petitioner in his wife's household between May 1, 2012 and February 28, 2015 causing a child care overpayment in the amount of \$31,129.15.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

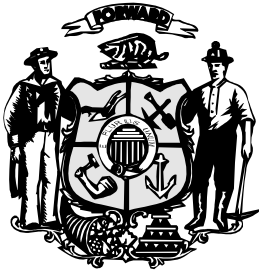
APPEAL TO COURT

You may also appeal this decision to Circuit Court in Milwaukee County. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 25, 2016.

Milwaukee County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud

Attorney [REDACTED]

Attorney [REDACTED]